IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL BLACK,)
Plaintiff(s),) No. C 08-2893 CRB (PR)
VS.	ORDER OF DISMISSAL
STATE OF CALIFORNIA, et al.,)
Defendant(s).)
)

Plaintiff, a prisoner at Mule Creek State Prison in Ione, California, has filed a pro se complaint under 42 U.S.C. § 1983 challenging the validity of his state conviction. Among other things, he requests that his state criminal case be reopened and that counsel be appointed.

Plaintiff's action must be dismissed without prejudice because it is wellestablished that any claim by a prisoner that would necessarily imply the invalidity of his conviction or continuing confinement, as plaintiff's claim would here, must be brought in a habeas petition. See Nelson v. Campbell, 541 U.S. 637, 642-44 (2004); see also Calderon v. Ashmus, 523 U.S. 740, 747 (1998) (claim by a prisoner attacking the fact or duration of his confinement must be brought under the habeas sections of Title 28 of the United States Code). And

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for essentially the same reasons, a claim for damages based on unconstitutional conviction would have to be dismissed without prejudice as well. See Heck v. Humphrey, 512 U.S. 477, 486-487 (1994) (claim for damages for unlawful incarceration or sentence is not cognizable under § 1983 until the conviction or sentence at issue is invalidated).

For the foregoing reasons, the complaint is DISMISSED without prejudice under the authority of 28 U.S.C. § 1915A(b).

The clerk shall enter judgment in accordance with this order, terminate all pending motions as moot, and close the file.

SO ORDERED.

DATED: <u>June 13, 2008</u>

CHARLES R. BREYER United States District Judge

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UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

GABRIEL BLACK,	Case Number: CV08-02893 CRB
Plaintiff,	CERTIFICATE OF SERVICE
v.	
STATE OF CALIFORNIA et al,	
Defendant.	/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 16, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gabriel Black V-65533 MCSP A-5-143 P.O. Box 409020 Ione, CA 95640

Dated: June 16, 2008

Richard W. Wieking, Clerk By: Barbara Espinoza, Deputy Clerk